

# **ADA GUIDE FOR MDPH CONTRACTED PROVIDERS**

**AGENCY:**\_\_\_\_\_

**PROGRAM NAME:**\_\_\_\_\_

**PROGRAM TYPE:**\_\_\_\_\_

**VENDOR CODE#**\_\_\_\_\_

**FEIN #**\_\_\_\_\_

**CONTRACT ID#**\_\_\_\_\_

**LICENSE# (When applicable)**\_\_\_\_\_

## **PROGRAM ADDRESS**

**(List actual sites):\***

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **MAILING ADDRESS**

**(If different than program site):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **NAME & TITLE OF INDIVIDUAL COMPLETING THIS GUIDE:**

**PHONE #**\_\_\_\_\_

**TTY#**\_\_\_\_\_

**FAX#**\_\_\_\_\_

**E-MAIL**\_\_\_\_\_

## **NAME & TITLE OF CONTACT PERSON *IF DIFFERENT* FROM INDIVIDUAL COMPLETING THIS GUIDE:**

**PHONE #**\_\_\_\_\_

**TTY#**\_\_\_\_\_

**FAX#**\_\_\_\_\_

**E-MAIL**\_\_\_\_\_

**\*You must include *all* program site addresses: Copy this Guide if necessary for each program site**

## **ADA Project Ratings and Definitions**

**Rating 1 = Acceptable:** A contracted DPH provider that adequately meets all requirements as outlined in the ADA Guide, Facilities Inventory, policies and procedures, and has a working TTY with staff trained on operation of the TTY.

**Rating 2 = Provisional:** A contracted DPH vendor that has acceptable policies and procedures in place and a reasonable written transition plan with a deadline for completion.

NOTE: There should not be a transition plan for obtaining a TTY: It must be purchased before an acceptable rating will be given.

**Rating 3 = Unacceptable:** A contracted DPH vendor that has either: 1) Submitted incomplete project materials; 2) Has not completed a transition plan by the deadline for completion; 3) Is non compliant working with DPH staff or contracted technical advisors; and/or 4) Has made no good faith efforts to comply with project requirements in a timely manner by prescribed deadlines.

**Rating 4 = No Rating:** A contracted vendor that has either: 1) A record in the ADA database pending an update due to a waiver or exception with a deadline for completion of materials; and/or 2) Pending a rating due to follow up work with DPH staff or contracted technical advisors with a deadline for completion.

## **I. ADMINISTRATION**

**A.** Provide the name and telephone # of your program's **ADA Coordinator** or the person in your program who is responsible for ADA Compliance and who can serve as a contact for the Department.

**B.** Please provide copies of any **Public Notice of ADA Compliance** which your program uses and a description of where and how it is disseminated. Alternatively, please provide other materials which your program uses to inform the public of your services and how individuals with disabilities may access your program.

**C.** Attach copies of the **Grievance Procedure(s)** which your program uses for addressing ADA discrimination complaints.

## **II. EMPLOYMENT**

Please attach copies of your program's:

**A. Reasonable Accommodation Policy.**

**B. Employment Training Assurance.**

## **III. NON-DISCRIMINATORY OPERATIONS**

Please attach copies of your program's:

**A. Equal Opportunity Policy.**

**B. Reasonable Modification Policy.**

**C. Eligibility Requirements Assurance.**

**D. Assurance Regarding Surcharges.**

**E. Integrated Services Assurance.**

**F. Significant Assistance Assurance.**

**G. Accessible Transportation Policy.**

**H. Community Referral Assurance.**

**I. Training Assurance Regarding Non-Discriminatory Program Operations**

**IV. EFFECTIVE COMMUNICATION**

Please attach copies of your program's:

**A. Effective Communications Policy.**

**B. TTY/TDD Assurance.**

**C. Alternative Format Policy and Procedures.**

**D. Interpreter Services Policy**

**E. Assistance Listening Device Assurance.**

**F. TV Captioning Assurance.**

\_\_\_\_\_ N/A, our program does not use a TV as part of its program.

**G. Video Assurance.**

\_\_\_\_\_ (N/A) Our program does not use videos.

**H. Training Assurance**

**V. PROGRAM AND FACILITY ACCESSIBILITY\***

Please attach a copy, or copies, of the **Facilities Inventory for EACH program site** owned or operated by your agency – organization including:

**A.** A list of architectural barriers and structural communication barriers whose removal is “readily achievable” **including a date by which removal of each of these barriers will be completed. Use the “Readily Achievable Transition Plan” forms for this list.**

**B.** A list of architectural barriers and structural communication barriers whose removal is not “readily achievable”, but whose removal is necessary to provide access to individuals with disabilities. Include an **estimate of the cost** of barrier removal. **Use the “Readily Achievable Transition Plan” forms for this list.**

**C.** A list of your organization's state, municipal or federal funding sources.

**\*If your program has a residential component please answer the questions in attachment A.**

# **INSTRUCTIONS FOR COMPLETION OF THE ADA GUIDE FOR MDPH CONTRACTED PROVIDERS**

## **INTRODUCTION**

Under the ADA, the Department, as a public entity, has obligations not to discriminate against individuals with disabilities directly *or through contractual arrangements*. Services and programs provided under Commonwealth contracts must be in compliance with all applicable disability laws. When the Department selected contractors through the procurement process, your agency agreed to provide certain assurances regarding compliance with disability laws as well as certain programmatic information about accessibility. To ensure that the Department's system of contracted services is meeting the needs of the public, the Department is asking you to provide copies of certain policies and assurances and related information regarding the accessibility of programs and services which you are providing through contractual arrangements with the Department.

## **I. ADMINISTRATION**

### **A. ADA COORDINATOR**

The Department is requesting that an ADA Coordinator be assigned within each agency. The ADA Coordinator's responsibility is to coordinate program compliance activities, ensure that the Self-Evaluation and other contractual requirements are completed, and to receive and investigate grievances.

### **B. PUBLIC NOTICE**

The Department is requesting that contracted providers provide notice to the public of ADA rights and requirements. This should consist of a statement that the program complies with the ADA and the name, phone number and address of the ADA Coordinator. It must be available in alternative format and be provided on an ongoing basis. Multiple methods of providing notice should be utilized, such as publishing it in documents disseminated to the public, posting it in prominent locations, including it in reports, program brochures, and manuals. Short forms should be included in conference flyers and event advertisements.

## **C. GRIEVANCE PROCEDURE**

The Department requires that contracted providers adopt a clear grievance procedure. A written policy must be in place which sets forth the procedure for employees, consumers and members of the public to file a grievance if they believe that their rights under the ADA are being violated. The policy should describe how a grievance may be filed and the process by which the grievance will be handled. The ADA grievance procedure may be incorporated in an existing grievance procedure. For more information and for a sample notice and grievance procedures see the Title II Action Guide which you may adapt for your agency.

## **II. EMPLOYMENT**

Agencies operating programs and services funded by the Department may not discriminate in employment practices against qualified job applicants or employees on the basis of disability. Title I of the ADA prohibits private employers from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training and other terms, conditions, or privileges of employment. Similar prohibitions exist for Title II governmental agencies.

The Department is requesting its contracted providers to provide assurances and documentation of policies and procedures ensuring non-discrimination in the area of employment. For more detailed information on employment obligations see the Employment Supplement to the ADA Title II Action Guide which contains practical step by step worksheets which may assist you.

### **A. REASONABLE ACCOMMODATION POLICY AND PROCEDURES**

Employers are required to provide “reasonable accommodation” upon request to a qualified job applicant or employee with a disability so that the job applicant or employee may have equal opportunity to apply, to perform essential functions of the job, or to be afforded equal opportunity in other benefits or privileges of employment unless an employer can demonstrate that the requested accommodation imposes “an undue hardship.”

A “reasonable accommodation” is a change in the manner or circumstances that a job function is done. Examples of reasonable accommodations include: changing the height of a desk for an employee who uses a wheel chair, allowing an employee with diabetes to eat at different times of the day, or having a sign language interpreter at a job interview for an applicant who is deaf.

The Reasonable Accommodation Policy should state your agency's commitment to provide reasonable accommodation to qualified job applicants and employees with disabilities. It should describe procedures for handling reasonable accommodation requests from employees and applicants, including who has authority to make undue hardship determinations.

## **B. EMPLOYMENT TRAINING ASSURANCE**

The Employment Training Assurance should state that training or other staff developmental opportunities are provided to staff on rights and obligations under Title I of the ADA. This should include the employer's requirement to provide reasonable accommodation, the differentiation between essential and marginal job functions, permissible and impermissible inquiries, and confidentiality requirements. Training should familiarize employees with your agency's reasonable accommodation policies and practices and other non-discrimination employment practices.

## **III. NONDISCRIMINATORY OPERATIONS**

Under Titles II and III of the ADA, programs and services are required to operate in a way that does not discriminate against persons with disabilities. The Department is requesting that contracted providers provide documentation of general operating policies that assure non-discrimination. The content of policies and assurances required are described below. For more detailed information see the ADA Title II Action Guide.

### **A. EQUAL OPPORTUNITY POLICY**

Contracted providers are required to provide equally effective opportunities for individuals with disabilities to participate in and benefit from services and programs funded by the Department. Policies must be in place to ensure that individuals with disabilities may participate in and benefit from services and programs which you offer to the general public.

### **B. REASONABLE MODIFICATION POLICY**

As a public accommodation and a Department contractor, your agency must make reasonable modifications to policies, practices and procedures to accommodate persons with disabilities unless your agency can demonstrate that such modification would "fundamentally alter" the nature of the program or services offered. You are not required to offer services outside your agency's legitimate area of expertise if, in the normal course of business, your agency would not offer services to an individual without a disability. For example, a clinic specializing in drug rehabilitation could refuse to treat a person who is not addicted to drugs or alcohol but may need specialized psychological services.



The Reasonable Modification Policy should contain your agency's commitment to make reasonable modifications when the modifications are necessary to afford persons with disability access to services and programs offered to the public. The Policy should contain procedures for determining whether a modification is reasonable. It should state which administrative or staff member(s) are responsible for making these determinations and the documentation needed to support a decision that a particular modification poses a fundamental alteration to the program. The Policy may contain examples of reasonable modifications to policies, practices, or procedures that your program might typically make.

Example of reasonable modification: allowing service animals access to a program site when animals are normally prohibited.

### **C. ELIGIBILITY & SAFETY REQUIREMENTS ASSURANCE**

As a public accommodation and a Department contractor, your agency is prohibited from using eligibility requirements that screen out or tend to screen out people with disabilities. Even when eligibility criteria may not be intended to screen out people with disabilities, eligibility criteria may inadvertently have that result; therefore all criteria should be reviewed carefully.

Example: An outpatient counseling program cannot require that a person with a mobility impairment be accompanied by an attendant to attend counseling.

Neutral rules may impose legitimate safety requirements that are necessary for the safe operation of the program even if the effect of such rules is to screen out persons with disabilities. Safety requirements must be based on actual risks and not on mere speculation or stereotypes.

Safety requirements must be reviewed to ensure that they are necessary to the safe operation of programs. Any decision to limit the participation of a person with a disability related to safety concerns must be reviewed on a case by case basis to ensure that the decision is based on facts, not myths or stereotype, and that all appropriate mitigating measures are taken to provide for maximum participation.

The Eligibility Requirements Assurance should contain a statement that the eligibility criteria for the program have been reviewed and, if necessary, modified to ensure that they do not screen out or tend to screen out people with disabilities. All safety requirements should be reviewed to ensure that they are based on actual risks. The Assurance should also state that as new criteria are developed, their impact on people with disabilities will be reviewed.

#### **D. ASSURANCE REGARDING SURCHARGES**

“Surcharges” imposed on people with disabilities for the provision of program modifications, access improvements, or communications aids are not permissible.

Example: A program may not charge a deaf person for interpreting services.

The Surcharges Assurance should state that surcharges will not be imposed on people with disabilities under any circumstances.

#### **E. INTEGRATED SERVICES ASSURANCE**

Services must be provided in the most integrated setting appropriate. It is permissible to provide separate programs, but these cannot be substitutes for access to integrated programs.

Example: It is permissible to hold a separate training on prostate cancer for people who are deaf, so long as the person with a hearing impairment is not barred from attending an integrated program.

The Integrated Services Assurance should state that services to people with disabilities are provided in the most integrated setting appropriate and that people with disabilities are not required to participate in separate programs.

#### **F. SIGNIFICANT ASSISTANCE ASSURANCE**

Programs to whom you provide significant support using Department funds may not discriminate against people with disabilities.

Example: Providing free space to a group that overtly excludes people with disabilities in a facility rented with Department funds would be prohibited.

#### **G. ACCESSIBLE TRANSPORTATION POLICY**

If transportation is provided by our organization to consumers or members of the public, it must also be provided to people with disabilities.

Example: If your agency offers teens who participate in anti-violence counseling programs at your agency shuttle bus transportation from school to your agency, then you must offer transportation to teen participants who have mobility impairments and use wheelchairs.

The Accessible Transportation Policy should contain names and phone numbers for providers of accessible transportation including companies with lift equipped vans, independent living centers, or other organizations which may offer accessible transportation services. If your program utilizes full size buses, it should include names and phone numbers of bus companies that have lift equipped vehicles. You may list the cost of transportation by various providers. The policy should designate a staff member or members responsible for coordinating the provision of accessible transportation.

## **H. COMMUNITY REFERRAL ASSURANCE**

If a program requires participation in other programs and services as a condition of participation or it makes referrals to other programs and services, it must be able to make referrals to accessible programs and services.

Example: If your agency operates a certified batterer intervention program and your agency requires batterers who have substance abuse problems to attend substance abuse counseling not offered by your agency, you must be able to make referrals to accessible outpatient substance abuse counseling programs.

The Community Referral Assurance should state that the program has information regarding which of the programs to which it may refer individuals are accessible and which are not. It should state that there is at least one accessible provider in each of the categories of services in which it makes referrals.

## **I. TRAINING ASSURANCE REGARDING NON-DISCRIMINATORY OPERATIONS**

The Training Assurance should state that training or other staff development activities provided by and/ or to agency personnel and volunteers will include information about ADA requirements that programs operate in a manner that is not discriminatory towards people with disabilities. Training should familiarize staff with agency policies and procedures related to non-discriminatory operation of programs and services offered by your agency.

## **IV. EFFECTIVE COMMUNICATION**

Titles II and III of the ADA require that that communication with individuals with speech, hearing, and visual disabilities be as effective as communication with others. Sometimes in order to provide equally effective communication, “auxiliary aids” and services such sign language interpreters or Braille materials must be provided. These are only a few examples of communication aids that might be required, not an exhaustive list. The Department asks for assurances and documentation of policies, practices, and procedures that ensure that equally effective communication is provided by your program.

### **A. EFFECTIVE COMMUNICATION POLICY**

The Effective Communication Policy should contain a statement of the program’s commitment to provide equally effective communication to individuals with speech, hearing, and visual disabilities.

Contracted providers must establish a clear process for clients/participants to request an auxiliary aide or service necessary for effective communication. Since the auxiliary aid requirement of the ADA is flexible and allows agencies to choose among various types of auxiliary aides and services to meet the effective communication requirement, the Policy should contain procedures for deciding what type of auxiliary aid will be provided giving primary consideration to the type of aid or service preferred by the individual with a disability.

Auxiliary aides that would result in an “undue burden” (i.e. “significant difficulty or expense”) or in a “fundamental alteration” in the nature of the services are not required. The Policy should designate an administrator or staff member responsible for making “undue burden” determinations and describe how such determinations would be made.

For more information on effective communication, see the Title II Action Guide.

### **B. TTY/TDD ASSURANCE**

The TTY/TDD Assurance should state that the program has a TTY, that agency staff has been trained in operating it, that the TTY number is listed in the telephone directory and is printed on all communications where the program’s phone number is given.

### **C. ALTERNATIVE FORMAT POLICY**

Contracted providers must assure effective access for persons who are unable to read print due to a disability. All print materials provided by your programs must be available in alternative format, such as Braille, large print, audio tape and computer disks. It is not required that each item be produced in alternative format, but that it is available upon request in a timely manner.

The Alternative Format Policy should state the program's commitment to provide material in alternative format necessary to provide equally effective communication. It should describe procedures for obtaining materials in Braille, large print, on audiocassette or on computer disk. It should list names and phone numbers of individuals who provide Braille transcription or other services with which the program may wish to contract. It should identify an administrator or staff member responsible for coordinating the provision of alternative formats and describe criteria for making undue burden determinations.

### **D. INTERPRETER SERVICES POLICY**

A sign language interpreter is required if necessary for providing equally effective communication to someone who is deaf or hard of hearing unless it is an "undue burden."

An Interpreter Services Policy should state the program's commitment to provide interpreter services to deaf and hard of hearing individuals when necessary to provide equally effective communication. It should identify an administrator or staff member responsible for coordinating interpreter services and under what circumstances interpreters will be provided. The Policy should designate an administrator or staff member responsible for making "undue burden" determinations and describe how such determinations will be made and what documentation is required to support such a determination.

### **E. ASSISTIVE LISTENING DEVICE ASSURANCE**

Assistive listening systems are auxiliary sound systems that enhance sound for individuals with hearing impairments who are not totally deaf. Assistive listening systems must be made available when necessary to ensure equally effective communication unless they pose an undue burden.

The Assistive Listening Assurance should state whether the program owns or can obtain assistive listening devices in a timely manner. If not owned, procedures for obtaining them should be described.

## F. TV CAPTIONING ASSURANCE

All televisions manufactured after 1994 are equipped with decoders that allow for captioning of programs. For older televisions not equipped with one, decoders can be purchased. If you use TV in your program, a decoder is required.

The Captioning Assurance should state that programs using television have televisions equipped with decoders and that staff has been instructed in their use.

## G. VIDEO ASSURANCES

Videos used by your program should be available with captions when necessary to provide equally effective communication for people who are deaf and hard of hearing.

## H. TRAINING ASSURANCE

The Training Assurance should state that training or other staff developmental activities address the program's obligation to provide equally effective communication under the ADA. It should also state that staff are familiar with the program's effective communication policies, practices, and procedures.

# V. FACILITY ACCESSIBILITY AUDIT

Contracted providers may have obligations to remove barriers under more than one statute. All public accommodations have an obligation under Title III of the ADA to remove architectural barriers and communications barriers that are structural when doing so is "readily achievable." **"Readily achievable" is defined as easily accomplishable with little difficulty or expense.** Even if a public accommodation can demonstrate that barrier removal is not "readily achievable," it must make its services available through "alternate means," if such methods are readily achievable.

For example, a provider that offers counseling services in a second floor suite which is accessible only by persons who can navigate up the stairs, may be able to relocate activities to accessible locations on the first floor even if it could demonstrate that installation of an elevator or lift was not "readily achievable."

For more information see the ADA Title III regulations on the U.S. Dept. of Justice website at the following web address:

<http://www.usdoj.gov/crt/ada/publicat.htm>

Contracted providers who are recipients of federal funds also have certain obligations to remove barriers under Section 504 of the Rehabilitation Act of 1973. In addition, recipients of federal funds must ensure that overall programs “when viewed in their entirety” are accessible to and usable by individuals with disabilities, even if each of its program sites is not barrier free. This is known as providing “program accessibility.”

Examples of ensuring program accessibility include scheduling the use of an accessible space on an as needed basis or entering into an agreement with a local Independent Living Center for your agency offer group counseling to persons with and without mobility impairments in an accessible space at the ILC provided that the space at the ILC is large enough to accommodate the group and is private enough to offer confidentiality.

See the 504 regulations and similar discussion in the Title II Action Guide for more information about the program accessibility. The ADA Title II regulations may be found on the U.S. Dept. of Justice website at the following web address:

<http://www.usdoj.gov/crt/ada/publicat.htm>

**The Department expects all contracted providers to survey EACH facility in which a DPH funded program is operated using the attached Facilities Inventory.**

A. After completing the Facilities Inventory survey of each facility, make a list of barriers that limit accessibility. Next identify those barriers whose removal is “readily achievable.” Establish an order of priority for the barriers on the list and project a date by which they will be removed. Readily achievable barrier removal is an ongoing obligation and can be carried out incrementally over a period of years. Use the “Readily Achievable Transition Plan” forms provided in your packet to compile this list.

B. Then make a list of all barriers whose removal is not “readily achievable”, but impair access to programs funded by the Department. Include an estimate of the cost of barrier removal. Identify the barriers that can be eliminated by alternate means. Use the “Readily Achievable Transition Plan” forms provided in your packet to compile this list.

C. If you are a recipient of governmental funds, list all state, municipal or federal funding sources.

## **RESIDENTIAL FACILITY ACCESS**

All residential programs funded by the Department of Public Health must be made accessible to and usable by persons with disabilities. The types of barriers to be eliminated include *physical barriers* such as narrow doorways or lack of accessible restrooms and *structural communications barriers* such as lack of tactile signage or visual fire alarms.

In evaluating the accessibility of your facilities and identifying barriers to be removed, the objective is to enable persons with disabilities to enter the facility and participate independently and safely in all programs, services, and activities. This does not mean that facilities must be brought up to a new construction standard of accessibility. Rather the facility must be brought up to a standard of *program accessibility*, which means that the level of accessibility provided must be sufficient to enable persons with disabilities to participate fully and realize the same benefit as all other clients. So, for example, an accessible bedroom or bedrooms must be provided (the number depending on the size of the facility) but not all bedrooms must be made accessible. So too for restrooms, counseling rooms and other redundant spaces.

If you have questions about the application of the program accessibility standard to your programs and facilities contact your contract manager or Paul Tupper at 617-624-5973.



## PROGRAM ACCESS:

1. Are all of your services or activities programmatically accessible to people with disabilities?

\_\_\_\_ NO

\_\_\_\_ YES

If any of your services or activities are NOT accessible, please identify them. (Include name of program and location.) Identify barriers to accessibility and list timeframes and cost estimates and person(s) responsible for making the program sites accessible by structural barrier removal or by development of program alternatives.

---

---

---

---

2. List three (3) programmatically accessible programs in your region that you will refer people with disabilities as your program moves toward full accessibility.

---

---

---

## SAFETY PROCEDURES

1. Are there visual fire alarms in client areas for people who are deaf and hard of hearing? (In bathrooms, bedrooms, kitchens, public areas, etc. This pertains to *all* programs)

\_\_\_\_ NO state plans and timelines for implementation:

\_\_\_\_ YES state location of visual fire alarms:

---

2. Attach the emergency evacuation procedure for people with disabilities.

---

---

a) How are emergency evacuation procedures explained to clients?

---

b) What is your procedure for making this information available in alternative formats upon request (Example large print, audio tape, Braille, etc.)?

Revised: May, 2002